



UAA Justice Center
UNIVERSITY of ALASKA ANCHORAGE

Scholarworks@UA — UAA Justice Center

November 5, 1982

Issues and Possible Consequences of Recriminalization of Public Drunkenness: An Informational Report

Stephen Conn & Roger V. Endell

Suggested citation

Conn, Stephen; & Endell, Roger V. (1982). *Issues and Possible Consequences of Recriminalization of Public Drunkenness: An Informational Report*. Report prepared for the Municipality of Anchorage. Anchorage: Justice Center, University of Alaska Anchorage.

Summary

This report evaluates the possible impact of recriminalization of public intoxication in Alaska. Review of national and state reports and information on the decriminalization of public drunkenness in Alaska lead to the conclusion that recriminalization will either require a significant increase in funding for justice operations or substantial reallocation of limited public safety resources. Recriminalization is unlikely to result in improved treatment of alcohol abusers or to reduce serious crime. Public drunks are more likely to be crime victims rather than perpetrators of serious crimes.

ISSUES AND POSSIBLE CONSEQUENCES OF
RECRIMINALIZATION OF PUBLIC DRUNKENNESS

An Informational Report



JUSTICE CENTER

University of Alaska, Anchorage
Anchorage, Alaska

ISSUES AND POSSIBLE CONSEQUENCES OF
RECRIMINALIZATION OF PUBLIC DRUNKENNESS

An Informational Report

For

Mr. Patrick Anderson
Assistant to the Mayor
Municipality of Anchorage

by

Stephen Conn
Roger V. Endell

Justice Center
University of Alaska, Anchorage

JC 8303

November 5, 1982

(For discussion purposes only.)

The Problem

The Alaska Municipal League public safety committee has endorsed the following position on public intoxication:

The league supports legislation which would amend the State Alcoholism Act to include public intoxication as an offense so as to provide the court with alcoholism treatment as an alternative to incarceration in order to provide a measure of control in the initial phase of rehabilitation and, additionally, to streamline the process of involuntary commitment within the State Alcoholism Act.

In an attempt to assess the wisdom of such a position, the Anchorage Mayor's office asked the Justice Center for assistance in evaluating the potential consequences of recriminalization of public intoxication in Alaska. Under the guidance of Professor Stephen Conn, national and state reports on the decriminalization of drunk in public and the impact of decriminalization on Alaska city and state justice systems were reviewed.

Summary of Findings

Based on the assessments which are summarized later in the body of this report, several conclusions were reached. First, recriminalization of public intoxication will drain away as much as one-third of law enforcement, prosecutorial and judicial resources needed to combat ever increasing rates of serious crime in Alaska. Furthermore, the Alaska Division of Corrections will confront extraordinary demands on its resources, both physical and personnel, at a time when it is under pressure to build new institutions and create new programs for persons awaiting trial and serving sentences for violations of statutes already on the books. It is estimated that the administration of a drunk in

public statute would cost Alaska a minimum of \$25 to \$50 million per year.

Second, one rationale of the proposed recriminalization is that will streamline the process of involuntary commitment. Such is not the case. Alaska's legal standards for involuntary commitment require a showing of incapacitation or endangerment, not mere intoxication, based on expert evidence and subject to detailed judicial inquiry. Both Alaska case law on right to treatment and due process and recent legislation supportive of patients' rights in the mental health context suggest that any attempt to soften the standards and procedures necessary to commit alcohol abusers involuntarily in all likelihood will meet with a rapid and successful legal attack.

A comparison of the historical reliance on "waivers" as an alternative to court process in Alaska cities before public intoxication was decriminalized in 1972 with the present practices related to the use of protective custody by local police reveals the latter to have been the more effective approach to assisting publicly intoxicated persons. Not only is a legal attack likely to be successful in challenging a public intoxication statute employed as a first step in an involuntary commitment procedure, but it is probable that the present, widespread use of protective custody as a substitute for arrests for drunk in public will also be simultaneously challenged.

Given the insecure legal situation surrounding public intoxication and protective custody statutes, "legal waves" in this area might also produce some unanticipated consequences. For

example, it is possible that municipalities and the state could find themselves under court order to provide public resources for special procedures, treatment and incarceration which are presently inadequate for the administration of a public drunkenness law.

Third, the historic use of a public intoxication statute has been to arrest in disproportionate numbers Alaska Natives who are also alcohol abusers. Although there is a confirmed association between alcohol use and violence, recent studies of very extensive control practices in two rural towns suggest that it is not the violent offender who is contained by police measures against public drinking, but a different category of offender whose age and situation do not make him a likely violent offender. Further, family members and acquaintances are more likely to request police assistance if an arrest is not the outcome, thus preventing violence before it occurs.

Conclusion

In a nutshell, the recriminalization of public intoxication will most likely require either a significant increase in funding for justice operations or a substantial reallocation of limited public safety resources. Further, recriminalization is not likely to result in improvement in the treatment of alcohol abusers. Neither will it reduce serious crime. What is more likely is new and unwarranted demands upon the city and state with a resultant negative impact on crime reduction and alcohol treatment in programs already established. Alaskan society will not be improved by classifying as criminal people whose only deviant

act is gross public drunkenness. Research findings reveal that such people are more likely to be victims of criminals than they are to perpetrate serious property or interpersonal crimes. The principles of a free society establish a social obligation to protect even obnoxious deviates especially when such deviates are not significantly harming others. The enhancement of the protections presently being provided for intoxicated persons may be a more reasonable, inexpensive and productive approach for public policy than is recriminalization of drunk in public.

ISSUES RELATED TO
LAWS PROHIBITING PUBLIC DRUNKENNESS

There are a number of questions dealing with issues ranging from the legality of public intoxication statutes to the problems and costs of the administration of their enforcement which bear on conclusions about the wisdom of adopting such statutes. The following is an effort to address some of the most significant of these questions.

Can Drunkenness be Made a Crime?

The question whether drunkenness per se, in the absence of any conduct, could be made a crime became a major issue in the wake of the U.S. Supreme Court's pronouncement in Robinson v. California, 370 U.S. 660, 8 L.ed. 2d 758 (1962), that drug addiction, in the absence of any other activity, could not be made a crime without violating the prohibition on cruel or unusual punishment found in the Eighth Amendment to the Constitution of the United States.

In two subsequent Court of Appeals cases, Robinson was interpreted as imposing constitutional limitations. In Driver v. Hinnant, 356 F.2d 761 (1966), the Fourth Circuit (N.C.) found the Eighth Amendment applied to bar a prosecution under a drunk in public statute when the record was clear that the defendant's presence in public was involuntary. To the same effect was Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966), where the involuntariness was attributed to the defendant's chronic drunkenness.

The issue came to the Supreme Court directly on the issue of

alcoholism a year later in Powell v. Texas, 392 U.S. 514, 20 L.ed. 1254 (1967), on an appeal from a conviction for drunk in public. The Court split 4 - 4 (thereby upholding the conviction) and the issue has not been to the court since.

In Watson v. United States, 439 F.2d 442 (D.C. Cir. 1970), the circuit court warned that any ruling that chronic drug addiction was a defense to drug possession on a compulsion theory (and by analogy, alcoholism and drunk in public) was too speculative in the absence of any Supreme Court clarification of Powell.

State courts have split on the issue. The Supreme Court of Ohio, in City of Dayton v. Sutherland, 328 N.E.2d 441 (1974), followed the Robinson approach. However, the Supreme Court of Georgia upheld a conviction even though the statute was applied not to drunks in public but in a home "not in the possession" of the accused in Burger v. State, 163 S.E.2d 333 (1968). In Seattle v. Hill, 435 P.2d 692 (1967), the Washington Supreme Court declined to rule that prosecution for drunk in public was the equivalent to prosecution for having a disease. Action under an irresistible impulse to drink was not the same as involuntary action. Alaska agreed. In 1969 in Vick v. State, 453 P.2d 342, the Alaska Supreme Court said the current state of medical knowledge did not mean a diagnosis of chronic alcoholism meant the defendant was acting under an irresistible compulsion. To the same effect was People v. Ambellas, 85 Cal. App.3d Supp. 24 (1978).

The Alaska court may have hoped to have seen the last of the

problem in Peter v. State, 531 P.2d 1263 (1975) in which they found the Uniform Alcoholism and Intoxication Treatment Act repealed drunk in public statutes by implication.

In summary, neither the U.S. Supreme Court nor the Alaska Supreme Court has ruled conclusively one way or the other. As of today, a statute making drunk in public a crime is not unconstitutional in this state. Possibly drunk in the home of another (the Georgia statute) might be unconstitutional under Alaska's privacy amendment to the state constitution. It may also be unconstitutional in Alaska to prosecute drunk in public where the "in public" is truly involuntary, as with a drunk being evicted from a bar. Likewise, the "legislative facts" of Vick might be reargued based upon proof that the compulsive drinking of an alcoholic makes his act of being drunk in public involuntary. As the D.C. Circuit said in Watson, we assume at least some initial element of voluntariness in the addict's predicament and, while an Eighth Amendment argument is available in any particular case, the burden of proof and persuasion on the defendant is a substantial one.

What Was the Effect of the Previous Alaska Drunk Statute?

Alaska Statutes contained a section on "Public Drunkenness" (AS 11.45.032) until it was repealed by the Uniform Alcoholism and Intoxication Treatment Act in the early 1970's. We have, therefore, limited historical information bearing on the impact of having public drunkenness classified as criminal behavior. This provides some information bearing on the impact of recriminalization.

In 1970, the Office of Vocational Rehabilitation surveyed one-half of the inmate population in 12 Alaskan state and city jails and Alaska inmates in three federal prisons. This data was reanalyzed by the State Office of Alcoholism. The study found that among sentenced males 36% had been charged with drunk in public (Hill: Alcohol and the Alaska Offender, 1975:19). Further, when Judy Hill evaluated booking sheet profiles comparing 1970 and 1973 for the Department of Corrections, she found there had been marked reductions in bookings for alcohol offenses from Fairbanks (from 51% to 29%), Ketchikan (65% to 29%) and Nome (63% to 29%) (Hill, Booking Profile Notes, Nov. 1972-Feb. 1973, July 30, 1973). These studies lead to the conclusion that every city can anticipate a substantial impact on its police and jail resources and the number of people incarcerated in Alaska Corrections can be expected to increase substantially if the law is changed.

Unlike protective custody, which may require a police pickup and short jail stay until a person sobers up, drunk in public absorbs large amounts of police time and jail space. A 1974 Division of Corrections study reviewed the cases of persons released from 1971 to 1974 who had served 10 days or more. The proportion of offenses that were alcohol related and resulted in 10 days or more in jail dropped from 34% of all offenses in 1971 to 7% in 1974. Between 1972 and 1973, they dropped from 25% of all offenses to 13%. Hill reports, "There was a thirty-eight percent decrease in number of alcohol-related offenses between 1971 and 1972, a forty-nine percent decrease between 1972 and 1973 and a

one percent decrease from 1973 to 1974." (Hill: 1975, 10).

Today, no one serves time solely for being drunk in public.

Statistics on changes in arrest patterns after decriminalization of public drunkenness in October, 1972, probably vastly underrepresent the impact which can be anticipated following a recriminalization. In 1972, Alaska's largest cities followed a policy which permitted a person who had been arrested for public intoxication to obtain a release and dismissal of the charge after sobering up by signing a waiver releasing the arresting officer, the police and the city from civil liability. This waiver policy, adopted in Fairbanks in 1967 and (with variations) in Juneau and Anchorage in 1970, saved judicial time and reduced the statistics in all cases but those involving multiple recidivists (See Friedman, 1970).

The impact of recriminalization in larger cities may be better estimated by looking to a time before the implantation of a waiver policy. Thus, Anchorage had 2,404 arrests for drunk in public of 4,327 arrests made in 1967. Over half of the former were repeat offenders (Friedman: 1970, 17).

Fairbanks reported that 81% of its arrests in 1969 were for drunkenness offenses. Of those arrested, 99% chose to sign a release consistent with Fairbanks police policy adopted in 1967 (Fairbanks Police Department, Drunkenness Offenses, mimeographed report, March, 1970).

How Much Will it Cost to Administer the Enforcement of a Public Drunkenness Statute?

Based on both national and Alaska statistics in the 1960-70 period when public drunkenness laws were widely enforced by police, at least one arrest in three was for public intoxication. Assuming this ratio remains valid today, if a public intoxication statute were reenacted, the arrest rate by police could be expected to increase by 25% to 35%. This would mean an increase in Alaska from approximately 20,000 arrests annually to approximately 30,000 arrests annually. In turn, the criminal caseload of the Alaska Department of Law, the Public Defender Agency and the Alaska Court System would also increase by 25% to 35%.

It would be necessary to either divert the resources of justice agencies from some of the activities they are currently performing or increase the present levels of support by 25% to 35% to handle the increased workload.

In addition, facilities and specialists for handling intoxicated persons adjudged to be in need of treatment will have to be funded. At the present time, there is neither adequate corrections facilities nor sufficient treatment personnel to handle the current alcohol treatment workloads. The Division of Corrections is projecting that six new correctional facilities will be needed in Anchorage by 1990 even if no law changes are made. If a public intoxication statute is enacted, the space requirements will increase by a minimum of 25% to 50% depending on the aggressiveness of police and the length of time required for treatment.

The number of independent variables involved makes it diffi-

cult to accurately estimate the additional costs of administering a public intoxication statute; however, a conservative statewide estimate would be in the neighborhood of \$25,000,000 to \$50,000,000 per year although the actual costs might very well be significantly higher than these figures.

Will The Recriminalization of Public Drunkenness "Streamline" The Involuntary Commitment Process?

Presently, protective custody provisions allow a police officer or emergency patrol to transport a person "incapacitated by alcohol" to a state or city jail if no treatment facility or emergency medical service is available unless he is no longer intoxicated or incapacitated by alcohol or for 12 hours whichever is first. AS 47.37.170(b) and (1).

Incapacitated means "unconscious or has his judgment or physical mobility so impaired that he cannot readily recognize or extricate himself from conditions of apparent or imminent danger to his health and safety." AS 47.37.170(j).

Incapacitation in this context is more than being drunk in public. Protective custody has, however, come to be used in lieu of drunkenness statutes. It has probably survived as such largely because each case has not been subjected to judicial scrutiny. So, also, have jails been used in some situations where treatment facilities simply do not desire to take on the additional burden of public intoxicants.

An emergency commitment requires a showing of not only intoxication, but also incapacitation by alcohol or that the person has threatened, attempted to inflict, or is likely to inflict

physical harm on another unless committed. AS 47.37.180(a).

Incapacitation here means "a person who is unconscious or has his judgment otherwise so impaired that he is incapable of

realizing and making a rational decision with respect to his need for treatment and as evidenced objectively by extreme physical debilitation, physical harm or threats of harm to others or chronic inability to hold regular employment." AS 47.37.270.

The person in question must be held in a treatment facility, not a jail. He must be treated medically. A commitment application must be reviewed by a judge within 48 hours. He may not be held on an emergency basis for more than five days unless a petition for involuntary commitment has been filed within that period and an administrator of an approved health facility determines that he should be held for an additional ten days longer.

Involuntary commitment under AS 48.37.190 requires a physician's certificate unless defendant refuses an examination and a clear showing of proof that alcoholism as well as either incapacitation or endangerment exists.

Along with a battery of procedural rights afforded the person whose commitment is sought is a statutory requirement that appropriate and adequate treatment be provided. When such treatment is not available or forthcoming, the person committed is entitled to discharge even if his condition has not improved. AS 47.37.200(g)(2)(B).

The Alaska Supreme Court has been vigilant in the realm of right to treatment. Significantly, it has adopted the logic of patients' rights in the realm of mental health and applied it to

treatment of alcoholism. See *Rust v. State*, 582 P.2d 134 (1978) and *Abraham v. State*, 585 P.2d 526 (1978).

In the realm of mental health, the Alaska legislature has spoken loudly in support of patients' rights. See Patient rights AS 47.30.825 et seq. It is inconceivable that attorneys for public intoxicants committed to treatment through an arrest process will not argue for application of these same patient rights to their own clients. Both in legislation and in case law, Alaska is in touch with national developments, standards and procedures. Legal limitations on involuntary commitment defined in statutes and case law will not disappear with recriminalization of drunk in public.

In practical terms, it is not likely that mere jailing will suffice as treatment. If subjected to judicial scrutiny, the demands on state and local authorities to provide treatment facilities, medical treatment and to afford patients due process rights are very likely. Moreover, one must consider whether protective custody, the non-arrest arrest favored by many, will bear serious judicial scrutiny as it is presently employed. An attempt to clothe arrests for public intoxication with a treatment rationale could backfire badly and leave many Alaska cities with a more serious problem of law enforcement than presently exists.

Can Corrections Handle the Increased Work?

Since 1975, the legislature has been active in the justice area. It has passed a new criminal code for the State of Alaska,

has passed a new drug bill, has dramatically increased the funding for programs and research sponsored by the State Office of Alcohol and Drug Abuse (SOADA), has funded development of a correctional master plan for the State, and either funded additions to, or authorized new construction of, correctional space in virtually every location in the state where correctional institutions exist. In addition, there have been ongoing pressures to "get tough on crime" by hardening the statutes, pushing the courts to consider lengthier sentences, eliminating plea bargaining (more recently pressuring to reinstitute it), and eliminating or severely restricting parole as a mechanism of release from

These and many other factors have already placed tremendous burdens on Alaska's prison and local jail capacities. From Ketchikan to Kodiak and Kotzebue, including the major more urban prison centers, the correctional system is overcrowded and, in some respects, operating under what may be unconstitutional conditions.

New jail cells and beds, with the supporting and necessary service and security areas, now cost in the neighborhood of \$125,000 per bed to construct and from \$10,000 to \$30,000 per bed each year to operate, depending primarily on the security level of the institution, its location, and the type of construction.

The Division of Corrections has historically been unable to provide the kind of care, treatment, or rehabilitative programs necessary to reverse criminogenic conditions whether they might be biologically or environmentally based. Numerous court deci-

sions dating back to Stevens v. State approximately a decade ago, the Mosely et al. case of the mid-1970's, or the more recent Williams class action suit, and finally the Cleary v. State case, were successful in the sense that the State of Alaska was forced to revise its policies, procedures and/or programs and facilities in dealing with the Alaska offender population. One might reasonably conclude that the Alaska Division of Corrections is ill-equipped to either house securely or treat effectively additional clientele regardless of whether they are viewed as criminal predators, social deviants, or society's victims.

Finally, it should be remembered that any attempt to provide the courts with an additional "hammer" - such as a "new" public intoxication offense - in order to develop alcoholism treatment capabilities or to "streamline the process of involuntary commitment" will meet failure at the door of the correctional system. Regardless of the good intentions of citizens, legislators, judges and others, there is no longer an economically or constitutionally viable alternative to be provided by our correctional system. The cost is exorbitant and the benefits to anyone, doubtful.

While the courts will have jurisdiction in a criminal case, it is Corrections which will have the "body." Persons to be held for hearing, trial, sentencing, evaluation, punishment and/or treatment will be held and managed by Corrections officials in an already over-stuffed system. The courts can recommend treatment and placement, but they cannot control either.

Each of the Divisions of Corrections and Mental Health, as

well as the Office of Alcohol and Drug Abuse, are housed organizationally within the State Department of Health and Social Services. Yet, successful interdepartmental coordination has not been effectively demonstrated since statehood, even though a single commissioner has traditionally managed these three public agencies under one umbrella-like management scheme. If the state or local municipalities were once again to turn to the incarceration of simple drunks, Corrections will likely suffer under scandal, law suits, perhaps riot, and at least very costly concrete and steel construction costs.

Alternatives to correctional placement must be developed. Procedures that are administratively or quasi-judicially based must be developed, and resources which are less expensive must be utilized to meet the problem of the social inebriate. The concept of the social hospital, as in Finland, could be applied in one urban center of the state, with a network of alcohol centers established throughout the state to address the immediate problems of local municipalities. It would be worthwhile to consider the development of a host of alternatives which could be far less costly in both humanistic or economic terms, rather than simply enacting a criminal law that probably at best would cage homeless inebriates and social misfits.

How Would the Statute Affect Alaska Natives?

In the 1970 Vocational Rehabilitation Study of inmates in state and city jails in 1968, nearly 15% of all arrests were for drunk in public, drunk in private, and "drunk." The report stated:

[T]here is a definite association showing that Native peoples are more often arrested for offenses committed against the public, or more commonly called "drunk-related" offenses. In light of this, the question of harassment must be considered by the reader (VCR Study, 1970:17).

In its reexamination of the data, the Office of Alcoholism found that Caucasians in the sample were more often convicted for "Aggressive offenses, e.g., physical offenses v. specific persons."

[T]here appears to be almost no differences between the drinking patterns of Native and Caucasian offenders (in the sample of Alaska inmates) said the authors (Office of Alcoholism, 1970:29).

"The disproportionate number of arrests of Natives for drunkenness offenses indicates that there is a large group of Caucasians who are not being arrested for these offenses, because they share socioeconomic characteristics which serve to protect them from arrest" (Id., 29-30).

In its 1970 reevaluation of the 1969 survey of Alaska inmates by VCR, the Office of Alcoholism noted that the two to one ratio between Native inmates and Native residents in the state due to arrests on drunkenness offenses in fact understated the discriminatory impact of these offenses.

In Anchorage, Fairbanks and Juneau where Natives comprised about 5% of the population, 53% of all arrests were of Natives (Office of Alcoholism, A Survey of Public Offenders II: A Comparison of Ethnic Groups, 26-27, 1970).

The evidence that drunk in public laws are enforced selectively against Natives is overwhelming in Alaska. Drunk in public resulted in twice the number of Natives jailed as non-Natives (Hill, 1975: 2). Even when drunk in public was removed, Alaska Natives were charged with 80% of alcohol related

charges termed nuisance charges (e.g., drunk on a public highway and disorderly conduct), while non-Natives were charged for 66% of OMVI charges.

A 1974 survey by the Division of Corrections of repeat offenders from those persons released after serving 10 days or longer showed the number of Natives serving more than 10 days dropped from 310 in 1971 to 190 in 1972, to 100 in 1973, to 84 in 1974 (Hill, 1975: 10).

Would Drunk in Public Arrests Cure Crime and Violence?

Drinking and crime are related. A 1974 sample of 103 offenders with sentences of six months or more found that 84% had been drinking on the day of the offense for which they were incarcerated (Hill, 1975:19).

However, it does not follow that use of drunk in public as a dragnet offense will curb serious crime and violence. In fact, it is by no means clear that even protective custody, employed on a vast scale, has had that effect in Alaska.

A careful review of police booking sheets as well as treatment center records in one rural Alaska town where police picked up 29% of town residents at least once for delivery to a treatment center revealed that perpetrators of felonies averaged 26 years of age, but police pick-ups on alcohol control crimes averaged 41 years of age (Conn, 1982).

A second rural town increased its protective custody pick-ups six fold with no significant reduction in violent crime (Conn and Boedecker, 1981).

Some persons may believe that an arrest is better than a

police decision to take a person into protective custody or to take a person to a sleep-off or a treatment center.

One rural town thought so when it added an open bottle ordinance to its normal practice of police transport to the treatment center.

Our 1972-1977 study of the situation revealed that the new ordinance had a negative effect on rates of serious incidents that were alcohol related when it was introduced. It caused persons who might have allowed themselves to be picked up to hide from the police (Conn, 1982).

Some persons believe that jail time, however costly, is a better deterrent to problem drinking and the serious problems it causes than police transport to a sleep-off center.

The Justice Center compared two rural towns, one that used transport to a sleep-off and treatment center, with another that used protective custody and jail as its primary device for dealing with drinking problems. The incidents of serious interpersonal violence in the home was higher in the second town than in the first.

Our conclusion was that family members and acquaintances of the problem drinker were more likely to call the police when they knew that the drinker would be taken to a sleep-off center and not to jail (Boedecker and Conn, 1981).

Since cooperation of citizens is necessary if police are to step in before serious violence occurs, what impact would recriminalization have on the cooperation of citizens with the police? What impact would it have on levels of violence that puts inno-

cent persons into our hospitals?

A final discovery from this study of alcohol control measures in two rural towns suggests that police time is more effectively expended transporting people to the sleep-off center than by booking them into jail, even on protective custody.

In a rural town whose alcohol control practices from 1972-1977, a fire inspector and budgetary shortfall caused the town shelter sleep-off shelter to be closed during fishing season in July, 1975, when drinking was heaviest. The municipal police department fell back upon protective custody pickups as an alternative to transporting people to the sleep-off center.

The result was that serious accidents requiring hospitalization, often alcohol related, skyrocketed. Included in those accident figures were crimes reported and unreported.

We examined the impact of this change on residents of the town and villages by combining booking sheets and treatment center data. We found that police could pick up as many as five times as many problem cases for dispatch to the treatment center as they picked up on protective custody.

It may be that some people let themselves be arrested. It may be that the red tape is thicker when persons are entered into a jail, even under protective custody.

Booking a person on drunk in public will place burdens on the police, the jail, the prosecutor and public defender and the court of a totally different magnitude than protective custody or transport to a sleep-off center.

When the Northern rural community under study began to arrest

people on an open bottle ordinance, both the D.A.'s office and the Fairbanks court complained of the burden imposed. The police stopped their arrests.

Does it make sense to return to this waste of judicial resources?

Will the Serious Crime Rate Be Reduced by Recriminalization of Public Drunkenness?

The research findings reveal that street people with alcohol problems tend to be the victims rather than the perpetrators of crimes. Further, when they are victimized, the crimes frequently are not reported to the police. The removal of drunk people from the streets may reduce the opportunities for crimes to be committed against them on the street, but it probably will not significantly reduce reported crimes. On the other hand, depending on the nature of the holding facilities provided by the state, assaults and interpersonal crimes inside correctional institutions may rise as these people are incarcerated. If this happens, government liability will increase because government has assumed responsibility for the arrested persons and is obligated to provide them with a secure and safe environment.

What Will a Public Intoxication Statute Achieve?

If adequate funds are allocated to increasing the justice system to handle the increased workload and to create the necessary treatment programs, the number of intoxicated people in public places might be reduced temporarily. Further, if a significant proportion of the persons who become intoxicated in public are rapidly apprehended and incarcerated, it might result

in a reduction in the health and accident problems and injury and death rates among such people. However, as previously suggested, these results would require a significant increase in the budgets of police, legal and correctional organizations in Alaska.

In the long run, based on past experience, short of creating a class of almost permanently institutionalized people with drinking problems, the so-called "revolving door" practices of the 1950's and 60's in the cities of the United States will return with recriminalization of public drunkenness. The fact that alcohol treatment programs have extremely low success rates is well known, and there is no reason for expecting that more productive programs will be instituted in the immediate future. If people with alcohol problems are not incarcerated for long periods and not rehabilitated, they will eventually return to the streets.

Are There Less Expensive or More Effective Approaches for Addressing the Problems of Public Intoxication?

The existence of "skid row" problems in urban areas has been documented throughout history. The people who occupy skid rows are typically people who are at a severe disadvantage in competing with other people for a productive role in the society. In addition to having alcohol problems, they tend to be minority group members (according to Alaska statistics, over 50% of the people arrested for drunkenness offenses are Natives), middle-aged, lower than normal educational preparation, and lacking in occupational skills and desired work habits. A disproportionate number are people who have had a history of nonviolent mental

action for people arrested for public intoxication. Further, mandatory rehabilitation programs are far from successful.

The most reasonable alternative might be to provide at convenient locations shelter, food and clothing needed to protect and minimally sustain people who constitute the public drunkenness class. This minimal life support could be supplemented by services which would focus on assisting such people in coping with and overcoming those problems which keep them from productive participation in society.

This approach, in contrast to the use of criminal law and prisons, would be more consistent with the philosophies and principles of a free, democratic society such as we strive to maintain in Alaska. At least, it should cost less, and could be expected to be at least as effective as a criminalization approach.

the disturbance or annoyance of another, upon conviction, is guilty of a misdemeanor, and is punishable by a fine of not more than \$300, or by imprisonment in a jail for not more than six months, or by both. (§ 65-10-3 ACLA 1949; am § 1 ch 225 SLA 1970)

Effect of amendment. — The 1970 amendment deleted items (3) and (4) and inserted "is" preceding "guilty of a misdemeanor." Puncsak, 16 Alas. 527, 146 F. Supp. 523 (D. Alas. 1956).
 "Jail," under AS 11.75.100, can be any place prescribed by the appropriate officer. United States v. Stated in Goreson v. State, Sup. Ct. Op. No. 436 (File No. 812), 432 P.2d 326 (1967).
 Am. Jur. reference. — 17 Am. Jur., Disorderly Conduct, § 1 et seq.

Sec. 11.45.032. Public drunkenness. (a) A person who (1) is drunk in a private place, not his own property or his usual place of abode, or in a public place, to the annoyance of another, or (2) drinks intoxicating liquor on a public street or sidewalk, or on the premises of a public carrier or business establishment offering goods or services to the public, which is not licensed to dispense intoxicating liquor, upon conviction, is guilty of a misdemeanor, and is punishable by a fine of not more than \$300, or by imprisonment for not more than 30 days, or by both.

(b) Any part of a sentence requiring a person convicted under this section to serve more than five days in jail shall be suspended subject to reasonable conditions relating to the rehabilitation of the offender, which may include commitment to a program or facility approved or provided by the Department of Health and Welfare for medical or rehabilitative services, if the court finds

(1) that at the time of the offense the defendant was not under a suspended sentence; and

(2) that the defendant was not convicted of another crime arising from the same incident.

(c) Notwithstanding the provisions of (b) of this section a court may continue the confinement imposed under this section for more than five days if it finds that

(1) there is reason to believe that the release of the defendant would be detrimental to his health or safety or to the safety of the community; and

(2) there is no suitable alternative to jail custody for the defendant available in the community.

(d) Nothing in this section precludes the court from exercising its discretion to suspend an entire sentence in an appropriate case. (§ 2 ch 225 SLA 1970)

Sec. 11.45.035. Illegal use of telephones. A person who anonymously telephones another person repeatedly for the purpose of annoying, molesting, abusing, through vile and obscene language, or harassing that person or his family, is guilty of a misdemeanor,

BIBLIOGRAPHY

- ALASKA, STATE OF, STATUTES. Charlottesville: Michie Press, 1981.
- CONN, STEPHEN. "Town Law and Village Law: Satellite Villages, Bethel and Alcohol Control in the Modern Era - The Working Relationship and its Demise," Unpublished, 1982.
- CONN, STEPHEN and BONNIE BOEDECKER. "Implications for Protective Custody Laws, An Analysis of Outpatient Accident Trends in the Two 'Dry' Towns of Barrow and Bethel," Unpublished, 1981.
- DIVISION OF CORRECTIONS, ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES. "Misdemeanant Probation Project: Evaluation of First Project Year", unpublished, February, 1965.
- _____. "Sentencing Study," Unpublished, 1974.
- _____. "Recidivism," Unpublished, 1971-74.
- FRIEDMAN, MARTIN. "The Problem of Drunk in Public Offenses in Alaska, Alaska Law Journal, January, 1970: 17-20. Los Angeles: University of California, Los Angeles.
- HILL, JUDY. Memorandum to all Superintendents on Booking Profile Notes, Nov. 1972 -Feb. 1973, July 30, 1973, Unpublished.
- _____. "Alcohol and the Alaska Offender," Unpublished, August, 1975.
- NIMMER, RAYMOND T. Two Million Unnecessary Arrests. Chicago: American Bar Foundation, 1971.
- OFFICE OF ALCOHOLISM, DEPARTMENT OF HEALTH AND SOCIAL SERVICES. A Survey of Public Offenders II: A Comparision of Ethnic Groups. Juneau: State of Alaska, July, 1970.
- TASK FORCE ON DRUNKENNESS. Task Force Report: Drunkenness. Washington: Government Printing Office, 1967.
- _____. The Challenge of Crime in a Free Society, Washington: Government Printing Office, 1967, p. 532 fwd.
- VOCATIONAL REHABILITATION SERVICES. A Survey of Public Offenders. Juneau: State of Alaska, 1970.

ADDITIONAL READING

- FAIRBANKS POLICE DEPARTMENT. "Drunkenness," Unpublished Memo, 1969.